

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 342 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ZUMURU MUMURU PATIL

Versus

GORDHANDAS KALIDAS PRAJAPATI

Appearance:

MS SUDHA R GANGWAR for Petitioners

MR RN SHAH for Respondents

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/02/2000

ORAL JUDGEMENT

1. Petitioners, who are original defendants, by filing this Civil Revision Application under Section 29 of the Bombay Rents (Hotel & Lodging House Rates Control) Act, 1947 ('Rent Act' for short), read with Section 115 of the Code of Civil Procedure, have challenged the

judgment and decree dated July 30 1983, passed by learned Joint District Judge, Panchmahals, at Godhra, in Regular Civil Appeal No.55 of 1981, whereby, a decree for possession of the suit land after removal of the super-structure (hut), was passed against the petitioners and they were further directed to pay mesne profits at the rate of Rs.24/- per year from the date of suit till the date of handing over possession after removal of super-structure of the suit land.

2. Respondents (original plaintiffs) had purchased the open land situated admeasuring 164 sq.yards situated near Bhuravav Road, bearing City Tika No.2, Lat No.424, on 3.7.1978 for a consideration of Rs.5999/- from Ramanlal Occhavlal Parikh. Petitioner No.1, who was serving in the State Reserve Police and staying in Godhra, by high-handedness to usurp the property, committed trespass on the suit land in March 1976 by encroaching land admeasuring 18 ft x 20 ft on eastern portion of the suit land, and constructed a hut. As per the respondents' case, the rest of the land was in their possession. The respondents, therefore, filed Regular Civil Suit No.228 of 1979 in the Court of Civil Judge (J.D.), Godhra, for recovering possession of the suit land from petitioner No.1 after removing super-structure of hut.

3. The petitioners resisted the suit by filing their written statement at Exh.18, inter alia, contending that the super-structure belonged to the father of petitioner No.2, Raijibhai Chhaganbhai, who expired in the year 1970 and petitioner No.2 was staying there from her childhood. It was averred that petitioner No.2 married with petitioner No.1 in the year 1970 and started staying with him since then. It was averred that there was no encroachment made on the suit land. According to the petitioners, the hut was constructed before the respondents purchased the suit land from Ramanlal Occhavlal Parikh. It was further averred by the petitioners that they were paying rent of Rs.24/- per year to the original owner of the suit land, namely, Ramanlal Occhavlal Parikh.

4. The trial court raised issues at Exh.19. The respondents, in support of their case, examined Jayantibhai Occhavlal Parikh at Exh.56 and Gordandas Kalidas Prajapati at Exh.63. The petitioners, in support of their case, examined Madhuben Ramjibhai Barot at Exh.27.

5. The trial court, on over all appreciation of oral

as well as documentary evidence, held that the suit filed by the respondents was time-barred and no notice was served on the petitioners. In the alternative, the trial court held that, even if the notice was served on the petitioners, it was not legal. The trial court also held that the petitioners had not committed trespass on the suit land and, therefore, the respondents were not entitled to claim mesne profit. The trial court further held that the erstwhile owner of the suit land, namely, Occhavilal Bhikhabhai, had given suit land to the father of petitioner No.1, Raijibhai Chhaganbhai, on yearly rent of Rs.24/-. The learned Second Joint Civil Judge (J.D.), Godhra, ultimately, by judgment and order dated March 26, 1981, dismissed the suit filed by the respondents to recover possession of the suit land.

6. The respondents filed Regular Civil Appeal No.55 of 1981 in the District Court, Panchmahals, at Godhra, challenging the judgment and order dated March 26, 1981, of the learned Second Joint Civil Judge (J.D.), Godhra, in Regular Civil Suit No.228 of 1979. The appeal was heard by learned Joint District Judge, Panchmahals, at Godhra, who, by judgment and decree dated July 30, 1983, allowed the appeal by holding that the respondents were entitled to get possession of the suit land after removal of the super-structure (hut). However, the learned Joint District Judge granted six months time to the petitioners to remove the super-structure situated on the suit land. The learned Joint District Judge awarded mesne profits at the rate of Rs.24/- per year to the respondents from the date of the suit till the possession of the suit land is handed over. The said judgment and decree of the lower appellate court is challenged by the petitioners by filing this Civil Revision Application.

7. Learned counsel for the petitioners has taken me through the entire record and proceedings of the courts below. Learned counsel for the petitioners has vehemently submitted that the lower appellate court has erred in not properly appreciating oral as well as documentary evidence. Learned counsel further contended that the father of petitioner No.2 was granted suit land on yearly basis by the erstwhile owner of the suit land and, therefore, the petitioners were tenants and the tenancy was not terminated by legal and valid notice. Learned counsel further submitted that the lower appellate court has erred in holding that the petitioners had committed trespass and encroachment on part of the suit land admeasuring 18ft x 20 ft on the eastern portion. Learned counsel for the petitioners further

contended that the lower appellate court has erred in not holding that the petitioners were tenants of the suit land.

8. Learned counsel for the respondents has vehemently contended that the respondents had filed suit against the petitioners contending that they were trespassers of the suit land and, therefore, the suit was not filed under the provisions of the Rent Act and, hence, Civil Revision Application under Section 29 of the Rent Act or under section 115 of the Code of Civil Procedure is not maintainable. Learned counsel for the respondents, in the alternative, submitted that the lower appellate court had properly appreciated oral as well as documentary evidence and had rightly come to the conclusion that the petitioners were trespassers who had encroached part of suit land admeasuring 18 ft x 20 ft and, therefore, the lower appellate court had rightly decreed the suit filed by the respondents for possession and removal of super-structure put on by the petitioners. Learned counsel for the respondents further contended that, as the petitioners were in illegal occupation of the suit land, the lower appellate court had rightly awarded mesne profit in favour of the respondents.

9. Contentions raised by learned counsel for the petitioners are devoid of any merit and deserve to be rejected. On the contrary, contention raised by learned counsel for the respondents that the present Civil Revision Application, which is filed under Section 29 of the Rent Act and also under Section 115 of the Code of Civil Procedure, is not maintainable, deserves to be accepted. The respondents had filed Regular Civil Suit No.228 of 1979 on the basis of their title over the suit land contending that the petitioners were trespassers on the suit land and had illegally constructed hut on the area admeasuring 18 ft x 20 ft. The suit was not filed under the provisions of the Rent Act. Therefore, in my view, the averments made in the plaint do not bring the suit within four corners of the provisions of Section 28 of the Rent Act. The suit was filed by the respondents against the petitioners under general law. Regular Civil Appeal No.55 of 1981, which was filed challenging the judgment and order of learned Joint Civil Judge (J.D.), at Godhra, was filed under Section 96 of the Code of Civil Procedure and not under Section 29(1) of the Rent Act. Therefore, in my opinion, no Civil Revision Application is maintainable against the judgment and decree passed by the lower appellate court in an appeal which was filed under Section 96 of the Code of Civil Procedure. The appropriate remedy which was available to

the petitioners was to file Second Appeal challenging the judgment and decree of the lower appellate court.

10. I have heard learned advocates for the parties on merits also. The lower appellate court had correctly appreciated the oral as well as documentary evidence in passing the decree for possession of the suit land and directing the petitioners to hand over vacant and peaceful possession of the suit land encroached upon by them by removing superstructure and awarding mesne profits to the respondents. No jurisdictional error is pointed out by learned counsel for the petitioners so as to bring the case within the provisions of Section 115 of the Code of Civil Procedure. No illegality or material irregularity is found to have been committed by the lower appellate court. I do not find any merit in this Civil Revision Application so as to interfere with the judgment and decree passed by the lower appellate court.

11. As a result of foregoing discussion, this Civil Revision Application fails and is hereby dismissed. Interim relief is vacated. Rule is discharged with no order as to costs.

(swamy)